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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/643,218	08/18/2003	Masanori Konishi	33476US2	3460
116	7590	01/18/2006	EXAMINER	
PEARNE & GORDON LLP 1801 EAST 9TH STREET SUITE 1200 CLEVELAND, OH 44114-3108			JEFFERY, JOHN A	
			ART UNIT	PAPER NUMBER
			3742	

DATE MAILED: 01/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

SP

<b>Office Action Summary</b>	<b>Application No.</b> 10/643,218	<b>Applicant(s)</b> KONISHI, MASANORI	
	<b>Examiner</b> John A. Jeffery	<b>Art Unit</b> 3742	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 October 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1 and 4-6 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 4-6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☒ Certified copies of the priority documents have been received in Application No. 09/890,115.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |                                                                                                    |                                                                             |
|----------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____                                                |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>20051027</u> .                                                            | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Withdrawal of Allowability***

The indicated allowability of claims 1 and 3-6 is withdrawn in view of the newly discovered prior art to Konishi (US 6,845,217). The delay in citation of this art is regretted. Rejections based on the newly discovered prior art follow.

### ***Claim Objections***

Claims 4/1 and 4/3 are objected to because of the following informalities:

In line 11, "pate" must be changed to "plate."

Appropriate correction is required.

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1, 3, 4/1, 4/3, 6/1, and 6/3 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 9-16 of U.S. Patent No. 6,845,217 in view of applicant's admitted prior art. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the instant application call for the reflection plate to be disposed a predetermined distance outside the lamp's glass tube. Providing spaced reflection plates to direct energy radiated from an infrared lamp, however, is well known in the art. For example, applicant in Figs. 25-26(b) and Pages 10-12 of the instant specification discloses a known infrared heating lamp with reflector 280 spaced therefrom. The reflector's ends are arranged orthogonally to its longitudinal direction on a plane including the heating element's center line. As shown in Fig. 26(a), radiant energy is directed in a certain direction due to the presence of the reflector. In view of applicant's admitted prior art, it would have been obvious to one of ordinary skill in the art at the time of the invention to provide a reflector spaced from the lamp claimed in the '217

patent so that energy radiated from the lamp was directed in a single direction (i.e., towards a workpiece to be heated).

Moreover, with the exception of the difference noted above, the claims of the instant application are merely broader in scope than the patented claims (e.g., the details of the electrode, connection device, and lead wire claimed in claim 9 of the '217 patent are omitted in the claims of the instant application). But it is well settled that merely broadening claims, without more, is not patentably distinguishable from narrower claims. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993). Therefore, such broadening --along with the patentably indistinct difference noted above -- does not patentably distinguish over the claims of the '217 patent. Moreover, there is no apparent reason why applicant could not have presented the instant claims during prosecution of the application that issued as the '217 patent.

Claims 5/1 and 5/3 are rejected under 35 U.S.C. 103(a) as being unpatentable over claims 9-16 of U.S. Patent No. 6,845,217 in view of applicant's admitted prior art and further in view of Prince (US 4,319,125). The claims differ from the previously cited prior art in calling for the cross section of the reflector plate to be a shape formed from a combination of plural straight lines. Such a reflector shape, however, is well known in the art. For example, Prince (US 4,319,125) in Fig. 4 and 5 discloses a reflector for radiant heater 12 comprising plural straight lines in cross section that form separate reflective surfaces 42a-42f and 48a-48j. Such a structure facilitates forming the reflector merely by bending a single piece of metal multiple times thus simplifying

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manufacture. In view of Prince (US 4,319,125), it would have been obvious to one of ordinary skill in the art at the time of the invention to form the reflector of the previously described apparatus with a plurality of straight lines in cross section to form the reflector by merely bending a single piece of metal multiple times thus simplifying manufacture.

### ***Other Pertinent Prior Art***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Applicant should (1) separately consider the art, and (2) consider the art together with the previously cited prior art for potential applicability under 35 U.S.C. §§ 102 or 103 when responding to this action. US 785 and US 017 disclose radiant lamps relevant to the instant invention.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John A. Jeffery whose telephone number is (571) 272-4781. The examiner can normally be reached on Tuesday - Friday from 7:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robin Evans, can be reached on (571) 272-4777. All faxes should be sent to the centralized fax number at (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for

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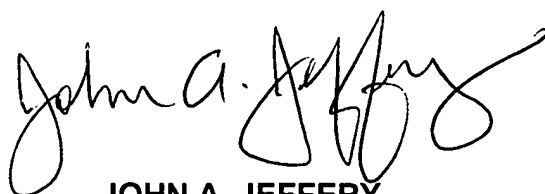
published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "John A. Jeffery", with a stylized flourish at the end.

**JOHN A. JEFFERY  
PRIMARY EXAMINER**

**1/12/06**